

# SENATE BILL REPORT

## SB 5037

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As of February 7, 2017

**Title:** An act relating to making a fourth driving under the influence offense a felony.

**Brief Description:** Making a fourth driving under the influence offense a felony.

**Sponsors:** Senators Padden, Frockt, O'Ban, Darneille, Miloscia, Kuderer, Zeiger, Carlyle, Pearson, Conway, Rolfes, Palumbo, Angel and Wellman.

**Brief History:**

**Committee Activity:** Law & Justice: 1/19/17, 1/25/17 [DP-WM].

Ways & Means: 2/08/17.

**Brief Summary of Bill**

- Makes Driving Under the Influence (DUI) or being in physical control of a motor vehicle while under the influence (PC) a felony offense if the person's criminal record includes three or more prior offenses within the applicable time periods.
- Makes a fourth DUI or PC offense a felony ranked at Level IV—instead of Level V—on the felony sentence grid.
- Adds a \$50 fee to be assessed on all persons convicted, sentenced to a lesser charge, or given a deferred prosecution as a result of a conviction for DUI, PC, vehicular homicide, or vehicular assault.
- Deposits fees into the highway safety account for grants to organizations within counties to combat DUI of alcohol or drugs.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

**Staff:** Melissa Van Gorkom (786-7491)

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### SENATE COMMITTEE ON WAYS & MEANS

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Travis Sugarman (786-7446)

**Background:** In 2013, the Legislature created an Impaired Driving Workgroup that worked over the 2013 interim to develop ideas and strategies to address vehicle deaths and serious injuries resulted from impaired driving. One of the strategies reviewed and supported by the committee members was to lower the minimum number of previous impaired driving convictions that must be counted before constituting and being punishable as a felony offense.

DUI or PC is punishable as a gross misdemeanor offense under current law, if the person has fewer than four prior DUI or PC offenses within seven years. A prior offense is within seven years if the arrest for a prior offense occurred within seven years before or after the arrest for the current offense.

A DUI or PC becomes a felony, ranked at Level V on the sentencing grid under current law if a person has four or more prior offenses within ten years. A prior offense is within ten years if the arrest for a prior offense occurred within ten years, before or after the arrest for the current offense.

Prior offenses include convictions for:

- DUI or PC;
- vehicular homicide and vehicular assault if either was committed while under the influence;
- negligent driving after having consumed alcohol (wet neg), and reckless endangerment, if the original charge was DUI, PC, vehicular homicide, or vehicular assault; and
- an equivalent local DUI or PC ordinance or out-of-state DUI law.

In addition, a differed prosecution for DUI or wet neg is a prior offense even if the charges are dropped after successful completion of the deferred prosecution program.

**Summary of Bill:** A person may be charged with felony DUI or PC if the person's criminal record includes three or more prior offenses instead of four or more within ten years. A felony DUI is ranked at Level IV—instead of Level V—on the felony sentence grid which means that a person with three prior DUI or PC offenses and no other criminal history would be subject to a standard sentencing range of 13 to 17 months incarceration.

An additional \$50 fee is assessed on all persons convicted, sentenced to a lesser charge, or given a deferred prosecution as a result of a conviction for DUI, PC, vehicular homicide, or vehicular assault. The money will be deposited into the highway safety account to be used solely by the Washington Traffic Safety Commission for grants to organizations within counties to combat driving under the influence of alcohol or drugs.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony (Law & Justice):** PRO: This bill sends a clear message that repeat DUI offenders should not be on the road. Education counseling and treatment would help prevent these tragedies from happening. There are many people with long records of driving under the influence who are still driving. Washington State is the only state in the union that waits until the 5th DUI to make this a felony, our law needs to change. For three years we have asked for officials to enact legislation that would cause someone to pause before getting on the road. Once may be a mistake, the second shows a pattern, the third should be a felony. If someone has not learned by the 3rd DUI, then they need to be taken off of our highways. Fifty percent of all traffic deaths are related to impaired driving. Drivers with prior DUIs are 65 percent more likely to be involved in a fatal crash than similar drivers who have not had a DUI. National Highway Traffic Safety Administration estimates that each traffic death costs an estimated \$10 million in economic and societal impacts. This means that Washington has incurred over \$10 billion in economic and societal costs associated with impaired driving deaths in the last five years. There are costs for this but it should be a priority. The immediate impact and hardships on families are beyond measure. It is hard to watch these things happen over and over again knowing that we could do something to stop them from happening. This is a step in the right direction.

**Persons Testifying (Law & Justice):** PRO: Linda Thompson, Executive Director, Greater Spokane Substance Abuse Council; Joan Davis, Volunteer, Mothers Against Drunk Driving; Dale Panattoni, Network Supervisor, Yakima Valley Memorial Hospital; Jeff Bartlett, citizen; Matthew Barlett, citizen; Shelly Baldwin, Legislative Liaison, Washington Traffic Safety Commission; James McMahan, Policy Director, Washington Association of Sheriffs and Police Chiefs; Rich Weyrich, Prosecuting Attorney, Skagit County Prosecutor's Office; Mark Lindquist, Prosecuting Attorney, Pierce County Prosecutor's Office; Kathy Kester, citizen; and Lana Weinmann, Chief Prosecutor, Attorney General's Office.

**Persons Signed In To Testify But Not Testifying (Law & Justice):** No one.

**Staff Summary of Public Testimony (Ways & Means):** PRO: Washington is one of the only few states that waits until the 5th DUI to make this a felony. Fifty percent of all traffic deaths are related to impaired driving. Drivers with prior DUIs are 65 percent more likely to be involved in a fatal crash than similar drivers who have not had a DUI. The National Highway Traffic Safety Administration estimates that each traffic death costs an estimated \$10 million in economic societal impacts. This means that Washington has incurred over \$10 billion in economic and societal costs in the last five years. We understand it is more expensive but we also know that drunk drivers are more likely to injure or kill others. Although this would be more work and more costly to county courts because of the shift of time and effort to county courts, it is the right thing to do.

**Persons Testifying (Ways & Means):** PRO: Senator Mike Padden, Prime Sponsor; Tom McBride, WA Assn. of Pros Attys; James McMahan, WA Assoc. Sheriffs & Police Chiefs.

OTHER: Shelly Baldwin, Traffic Safety Commission.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.